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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 RUTH KOLAS,)
11)
12 Plaintiff(s),)
13 v.)
14 WAL-MART STORES, INC.,)
15 Defendant(s).)
_____)

Case No. 2:17-cv-01597-APG-NJK
ORDER
(Docket No. 35)

16 Pending before the Court is Plaintiff's motion for an adverse inference instruction and to
17 preclude certain testimony. Docket No. 35.

18 Federal courts have broad discretion in controlling their dockets. *See, e.g., Landis v. N.*
19 *American Co.*, 299 U.S. 248, 254 (1936). Courts also have a "general duty to avoid deciding
20 unnecessary issues." *Turner v. U.S. Parole Comm'n*, 810 F.2d 612, 613 n.3 (7th Cir. 1987). To that
21 end, courts may sequence motion practice in an effort to avoid deciding unnecessary issues and will
22 generally resolve motions regarding trial after it is clear that there will likely be a trial. *See, e.g., Local*
23 *Rule 16-3(a)* (setting deadline for filing motions in limine at 30 days before trial).

24 Plaintiff's pending motion is premised on her contention that the alleged spoliation of evidence
25 "has prevented [her] from presenting [that] evidence at trial." Docket No. 35 at 14. As a remedy,
26 Plaintiff seeks an order for an adverse inference jury instruction and an order precluding certain
27 testimony. *See, e.g., id.* at 11. Discovery remains open for another three months, however, and
28 summary judgment motions are not due for four months. *See* Docket No. 34. Unless either the

1 dispositive motions deadlines lapses without a motion for summary judgment or any filed summary
2 judgment motions are denied, it is not clear that there will be a trial in this case. Nor is it clear whether
3 additional pertinent information may be derived through the discovery process. Hence, it is not clear
4 that Plaintiff's motion seeking relief regarding trial should be decided at this time. *See, e.g., Swindell*
5 *Dressler Int'l Co. v. Travelers Cas. & Sur. Co.*, 827 F. Supp. 2d 498, 508 (W.D. Penn. 2011) (denying
6 as premature spoliation motion seeking adverse inference because case was still in discovery phase,
7 motions for summary judgment had not been filed, and a pretrial order had not been issued); *see also*
8 *Ingram v. Pacific Gas & Elec. Co.*, 690 Fed. Appx. 527, 530 (9th Cir. 2017) ("Since adverse inference
9 instructions are provided to juries at the conclusion of trial, the district court did not abuse its discretion
10 by denying Ingram's request for an adverse inference at the summary judgment stage of these
11 proceedings").

12 The parties shall file, no later than March 23, 2018, statements no longer than three pages in
13 length explaining whether Plaintiff's motion should be denied without prejudice to being renewed
14 concurrently with the filing of the parties' joint proposed pretrial order (*i.e.*, after the summary judgment
15 stage of litigation).

16 IT IS SO ORDERED.

17 DATED: March 16, 2018

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20 NANCY J. KOPPE
21 United States Magistrate Judge
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